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CURRENT TOPICS

Floreat " Greater Hardship "!!

WE would be considerably more (or perhaps less) than human if we had not chortled discreetly when the horse which we had been backing for several months won in the Court of Appeal last week. There is always the possibility that the noble animal may be disqualified in the House of Lords, but unless and until that happens we can work on the assumption that the proviso after para. (*h*) of Sched. I to the Rent, etc., Act, 1933, has not been repealed by the Rent Act, 1957, and that greater hardship is still part of our law. Thus, subject to the House of Lords, ends a controversy which, though it has not gone as far as dividing families for good, has led to entertaining divergences of opinion among county court judges, text-book writers and others whose opinions are publicised, to say nothing of solicitors who are able to be wrong, temporarily at least, in an unobtrusive way until the Court of Appeal tells us what the law is (and always has been). Entertaining though this kind of thing may be, it is expensive and inconvenient for the unfortunate people whose rights have been in doubt since last July; it is the price we pay for denying to the courts the luxury of asking Parliament what it meant. As we mentioned last week, ambiguities and absurdities are surprisingly rare, and it is probably true that the invention of some constitutional device for enabling the courts to refer back to Parliament would create more problems than it would solve.

Fixed Costs in the County Court

FOR many years past, plaintiffs who have begun actions in county courts have been tolerating without open complaint the fact that, if the defendant makes a payment into court, together with the plaint fee and the appropriate costs, the plaintiff can recover no more costs if he settles for the sum paid in. We may be wrong—and we do not know whether statistics would support us even if they were available—but our impression is that paying into court is a practice which is not used as much as it used to be. Last week the Court of Appeal, in *Reid* v. *Thomas Bolton & Sons, Ltd.* (*The Times*, 6th February), held that those who have quietly accepted the situation in the past have been in law quite right to do so. We congratulate the plaintiff and his advisers on their courage and enterprise in questioning the law on the subject, and we commiserate with them on their failure. We think that there is a good case for amending the County Court Rules so as to enable costs to be taxed when a claim is unliquidated. While we agree with PEARCE, L.J., that the present rules give an incentive to defendants to get rid of an action at an early stage before it becomes overloaded

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with costs, we doubt whether this incentive would be diminished by increasing the costs recoverable, even on an early payment in. Further, if negotiations are protracted, it obviously pays defendants to wait until a summons is issued and then make an immediate payment in. It is surely wrong that the rights of injured persons should depend on subtle moves like these, and in fact very few defendants appear to indulge in them.

Confining *Gourley*

A LITTLE over a year ago we drew attention (101 SOL. J. 93) to the latent, and perhaps surprising, potentialities of one of the most widely discussed judicial decisions of recent years—that of the House of Lords in *British Transport Commission* v. *Gourley* [1956] A.C. 185. Making a consolidated salvage award in *The Telemachus* [1957] P. 47, WILLMER, J., had granted to the master and crew of the salving vessel a sum larger than he would otherwise have awarded on the ground that certain of the claimants were likely to have their rewards diminished by the incidence of taxation. This demonstrated, as we ventured to call it at the time, *Gourley* in reverse, for in the circumstances of the leading case, the House of Lords was concerned with a reduction, not an increase, of damages. The full report is now available of *Island Tug and Barge, Ltd.* v. *Owners of s.s. Makedonia* [1958] 2 W.L.R. 256; *post*, p. 124, in which PILCHER, J., on facts which he held to be indistinguishable from those in *The Telemachus*, declined to follow the judgment of Willmer, J. Pilcher, J., has taken a narrower view of the principle underlying the *Gourley* decision, a view, it seems, which would confine its application to those cases where the award about to be made is not subject to tax, though the income for the deprivation of which the damages are given would have been so subject. The claimants in the recent case were a company whose business included the undertaking of salvage work. "If it is right," said the learned judge, "that awards made to salvors, which are already assessed on generous lines, should be exempted in whole or in part from liability to tax, this seems to me to be a matter for consideration by the Legislature." It is certainly difficult to see how in salvage cases there can be any question of comparing the award with some notional loss of the claimant, taxable or otherwise. But the practical position from the adviser's point of view is that there are now two conflicting decisions of equal authority on the point. We respectfully think that the later one is the more persuasive.

The Cost of Being Named

IT cannot be disputed that a successful wife petitioner, in a suit for dissolution of marriage, who has joined the woman alleged to have been guilty of misconduct with her husband as a respondent with him under the provisions of s. 3 (2) of the Matrimonial Causes Act, 1950, may obtain an order for the payment of her costs by the woman named in her petition. To say the least, it has been regarded as doubtful whether this relief is available to the wife in a suit for judicial separation, but in *Leach* v. *Leach and Harrower* [1958] 1 W.L.R. 146; *ante*, p. 88, Mr. Commissioner LATEY, Q.C., decided that, where there was a petition for judicial separation on the ground of the husband's adultery with a woman named and the alleged adulteress had been named in the petition as second respondent and entered an appearance, the court had power to make an order for the wife's costs against the woman named. The Commissioner held that s. 14 of the Act, which relates to petitions for judicial separation, "picks up" those of s. 3, which concern petitions for divorce, and in consequence the court has power to make any order for costs in a suit for judicial separation which it has jurisdiction to make in a suit for divorce. A further reason given by which the court is able to award costs against a woman named in a suit for judicial separation is that such a person is a "party" to the suit within the meaning of s. 225 of the Supreme Court of Judicature (Consolidation) Act, 1925, and as such is liable to have an order for costs made against her at the discretion of the court. The possibility of obtaining an order for the payment of the wife's costs by the woman named in a petition for judicial separation should not, in future, be overlooked.

Piers and Licensing Laws

IN the film "Barnacle Bill," Mr. ALEC GUINNESS, the owner of a pier, seeks to avoid the application of the laws relating to licensing for intoxicating liquor and music and dancing by registering the pier as a ship. One may doubt both the legal validity of this course and its necessity. It was held in *Blackpool Pier Co.* v. *Fylde Union* (1877), 41 J.P. 344, a rating case, that so much of the pier in question as was beyond low-water mark of the open sea was "beyond the Realm of England" and "out of the Realm." This case has never been overruled, and was approved at first instance in *Barwick* v. *S.E. Railway* [1920] 2 K.B. 387; it is also still cited in the text-books. The general effect of the case seems to be, therefore, that so much of a pier as lies beyond low-water mark of the open sea (as opposed to estuaries and some bays) is outside England and it would therefore be both outside the application of statutes creating summary offences and also outside the jurisdiction of magistrates' courts for the trial of summary offences. Indictable offences committed within the three-mile limit, however, are within the jurisdiction of English courts by the Territorial Waters Jurisdiction Act, 1878, and other statutes contain special provisions expressly applying them to territorial waters, e.g., the Wireless Telegraphy Act, 1949, s. 6 (1).

A Change in the Law

So far as licences for music and dancing are concerned, it therefore seems doubtful if the jurisdiction of magistrates and councils to grant such licences extends beyond low-water mark and, even if it does, there is the difficulty of finding a magistrates' court that has jurisdiction beyond that mark. The Magistrates' Courts Act, 1952, s. 3 (1), relates only to offences within 500 yards of the boundary of "two or more local jurisdictions" and here there is only one court concerned. As regards licensing for liquor, the Licensing (Consolidation) Act, 1910, s. 107 (1), expressly provided that for all the purposes of that Act any pier extending from any place within the jurisdiction of any licensing justices or magistrates' court into or over any part of the sea should be deemed to be within the jurisdiction of those justices, but this subsection has not been re-enacted in the Licensing Act, 1953. One is therefore left in considerable doubt as to the position in regard to the licensing laws on piers unless there is some local Act of Parliament providing that the pier shall be within the adjoining borough. The whole matter is discussed at more length in the *Modern Law Review*, January, 1950, under the long title of "The Application of Enactments within English Territorial Waters." It might perhaps have been given the short title of "Piers Not of the Realm."

Legal Aid: Pensions Appeals

In a note on Appeals from Pension Tribunals in the February issue of the *Law Society's Gazette*, the Council announce that they have reconsidered the note published in the May, 1951, issue, and that experience has shown that circumstances may arise in which it is reasonable to grant a civil aid certificate or an emergency certificate where the provisions of s. 6 (2) of the Pensions Appeal Tribunals Act, 1943, and r. 28 of the Pensions Appeal Tribunals Rules apply, and there is no financial assistance available to the applicant for the purpose of any such proceedings. Applications for certificates in connection with such appeals to the nominated judge under the terms of the above Act should be treated as coming within the terms of reg. 3 (*b*) of the Legal Aid (General) Regulations, and should, it is stated, be considered by an area committee. Before granting a certificate, the area committee should be satisfied both that there are reasonable grounds for taking the proceedings, and that in the particular circumstances of the case it is reasonable that legal aid be granted. Area committees are advised that the matters covered by the certificate should relate not only to the application for leave to appeal but also to the appeal, in view of the fact that it is a common practice of the nominated judge, if he grants leave to appeal, to hear the appeal at the same time as the application for leave. The note adds that it should be pointed out to the applicant that, although in the event of legal aid being granted he will be entitled to be paid the costs of the application to the High Court and of the appeal itself by the Pensions Appeal Tribunal, there may well be additional costs incurred under his certificate which will be deducted from any contribution for which he may be liable.

Remote Education

One of the chief problems which The Law Society has to face in educating articled clerks is the time and expense of collecting them together. In London and other large cities there is no difficulty, but in many parts of the country so many articled clerks are scattered in such small packets that legal education cannot be organised locally. At present there are three possible solutions. The young men and women can be sent to London for six months at a time, which is expensive: they can travel long distances each day, which wastes time: as a final resort they can have correspondence courses. Last week we saw a demonstration of closed circuit television. We understand that there is no technical reason why lectures and demonstrations should not be televised to selective audiences over wide areas. Already it is possible to talk back to the lecturer from one room in the same building to another and we assume that it is only a matter of time before a law student in a remote Welsh valley can cross-examine a lecturer in Aberystwyth. In the meantime, we suggest that The Law Society could salute the new industrial revolution by hiring a closed circuit for some of their more popular lectures so that those of us who always forget to send for tickets until the last moment do not have to sit in the Library listening to a disembodied voice.

A Court of Arbitration?

Apropos a recent lecture on the Commercial Court given by Mr. Justice Devlin and reported at 101 Sol. J. 950, we commend proposals outlined in the January issue of the *Journal of Business Law*. Those who are acquainted with the facilities afforded by that court know how valuable they can be in commercial matters; an instance was afforded only recently in the *British Imex Industries* disputes, when an application for an injunction was heard and dealt with by the Commercial Court and, on appeal, by the Court of Appeal within two days of the date of applying, and judgment was given eleven days after the issue of the writ. Yet it seems that the services of the court are not fully employed for reasons outlined in the lecture, and the proposals of the *Journal of Business Law* are an attempt to rescue the court from the dissolution adumbrated by the observed trends. It is propounded that a Court of Arbitration should be constituted and should sit at the Royal Courts of Justice. Briefly, it would consist of a judge and an arbitrator who would hear the dispute in private until some point of law of importance arose: then the court would adjourn into open court when the legal dispute would be argued and decided in the usual manner. When sitting in private, the court would sit in the judge's chambers and the proceedings would be of an informal character. For the purpose of international execution, the decision would be in the nature of an arbitration award so as to have the advantage of greater ease of enforcement. We should like to see this tried out.

Interest Rates for House Purchase

The first scheme to enable people building or buying houses to borrow money at a variable rate of interest from a local authority has been approved by the Minister of Housing and Local Government, it was officially announced on 5th February. Local authority house purchase schemes normally provide for a fixed rate of interest for the whole period of the loan, and prospective house buyers hesitate to borrow from councils when interest rates are high. This fixed rate is usually $\frac{1}{4}$ per cent. more than the current rate at which local authorities themselves borrow from the Public Works Loans Board. The new scheme was submitted by Hampstead Borough Council in response to the Minister's announcement to local authorities last November that he would be willing to consider new or revised schemes which provided for a varying rate of interest under the Housing Acts. It permits the increase or decrease of interest rates to take account of changes in the Public Works Loans Board rate, by giving three months' notice to borrowers. It gives to the local authority the same flexibility in fixing interest rates as that enjoyed by building societies. The scheme will not affect existing mortgages and will apply to new borrowers only.

Advanced Legal Studies

The growth of the Institute of Advanced Legal Studies in the ten years since its foundation is indicated by the fact, noted in its annual report for 1956–57, that its library now has well over 50,000 books and that there is an annual enrolment of 335 readers. Under Sir Norman Birkett as chairman and Sir David Hughes Parry as director, the Institute has had a year of great achievement, two noteworthy events being the publication in November, 1956, jointly with the United Kingdom National Committee of Comparative Law, of "A Bibliographical Guide to the Law of the United Kingdom, the Channel Isles and the Isle of Man," and in May, 1957, "A Survey of Legal Periodicals" (2nd ed.), now about twice the size of the first edition in 1949. The seminar classes, lectures and reading facilities afforded by the Institute, as well as the numbers of visitors it receives from abroad, amply justify considerably more expenditure than it is at present permitted to indulge in.

TAX SAVING—COMPANY OR PARTNERSHIP?—I

"No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business, or to his property, as to enable the Inland Revenue to put the largest possible shovel into his stores; . . . the taxpayer is entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Inland Revenue." These well-known words of Lord Clyde in *Ayrshire Pullman Services and Ritchie* v. *Inland Revenue Commissioners* (1929), 14 Tax Cas. 754, at pp. 763–4, are particularly apposite to-day by reason of the high rate of profits tax on company distributions and the heavy charge to sur-tax on large incomes.

While tax evasion (as opposed to tax avoidance) may well incur penalties or give rise to criminal proceedings, it is the plain duty of those charged with the conduct of business affairs (and their advisers) so to plan those affairs as to expose the taxpayer to the smallest possible tax bill. And since the taxpayer who has chosen the wrong way of arranging his affairs cannot claim tax exemption because, had he chosen the right way, no tax would have been exigible, the time to consider the tax implications of any proposed transaction is before that transaction is entered into.

The problem of tax saving frequently arises in acute form when the owner of a successful business finds himself becoming saddled with a heavy bill for sur-tax. Should he take his sons or other relatives into partnership, or should he convert his business into a "family" company? It is the purpose of the present article* to examine this problem, which embraces, not only the business itself, but the family circumstances of those who depend on it for their livelihood.

Income tax

Whichever way the final decision lies, the profits of the business will continue to be assessed under case I (or case II) of Sched. D. The same initial and annual allowances may be obtainable, while the expenses of the business will still be governed by s. 137 (*a*) of the Income Tax Act, 1952, according to whether or not they are "wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation." Where a company's position, for income tax purposes, differs largely from that of an individual or partnership is in the treatment of the benefits which accrue to its directors. Sections 160–168 of the Income Tax Act, 1952, provide that any amount received by a director of a body corporate, or by an employee paid at the rate of £2,000 per annum, by way of reimbursement of expenses, shall be treated as part of his total emoluments, subject to a claim to some deduction in respect of those expenses under the restricted provisions of r. 7 of Sched. IX to the Act. Similar provisions apply to the higher paid employees of partnerships, but not to an individual trader or the partners themselves.

In other respects, too, there are differences: while partners are entitled to their several personal reliefs, and effect is given to those reliefs in assessing the partnership income, a company enjoys no such reliefs. On the other hand, salaries are deductible from the income of a company before arriving at its profits, whereas partnership salaries, interest on capital and shares of balance (less earned income relief in the case of active partners) must be added back to arrive at the partnership income. Again, though directors' fees and salaries are "earned" even if the income of the company is partly or wholly of a kind that would be "unearned" if received by an individual, the distinction between earned and unearned income applies to partnership income as it applies to the income of individuals. Some of these differences, however, merely serve to facilitate, as far as possible, the collection of tax at the source, and it is in respect of other forms of taxation that the comparative advantages and disadvantages of companies and partnerships are most clearly to be found.

Sur-tax

Normally, a company pays no sur-tax, but this statement is subject to an important qualification. A controlled company is subject to the provisions of ss. 245–264 of the Income Tax Act, 1952, and so is liable to sur-tax directions and the apportionment of its income among the members if it fails to pay a reasonable dividend. A "controlled" company is one which is (i) under the control of not more than five persons; (ii) not a subsidiary company within the meaning of s. 256 (4) of the Act; and (iii) not a company in which the public hold shares carrying 25 per cent. or more of the voting power, and such shares have been officially quoted, and dealt in, on a recognised stock exchange during the year. "Person" bears an extended meaning, so that persons who are relatives of one another; persons who are nominees of any other person, together with that other person; persons in partnership; and persons interested in any shares of the company which are subject to any trust, or are part of the estate of a deceased person, are respectively treated as a single person. "Control" can take any one of a number of forms by virtue of a "person's" rights as to capital, income, directive powers, or interest in the company. If any one of these forms of control can be shown to be vested in five or fewer "persons," the company is a controlled company. In practice, a company must usually have at least eleven unrelated members to escape control, and it is almost impossible for a "family" company to be otherwise than "controlled.",

The liability of the family company to sur-tax directions is, therefore, greater than appears so at first sight, and the withdrawal of the "Chancellor's umbrella" last August has done much to enhance the risk. Previously, companies formed prior to June, 1947, enjoyed, by concession, comparative immunity from sur-tax directions provided they maintained the same level of dividends as for previous years (even if the profits had since risen), or, in special cases, paid no dividends at all. In practice, this concession was extended to companies formed since 1947, but the withdrawal of the concession has now exposed companies, old and new, to the full rigours of ss. 245–264 of the Act.

What is a reasonable distribution is a question of fact in each case, but it is specifically provided that the Special Commissioners shall have regard not only to the current requirements of a company's business, but also to such other requirements as may be necessary or advisable for the maintenance or development of the company's business. Thus a company may be able to justify the retention of its profits because it is meeting fierce competition or is expanding its business and is purchasing additional plant and machinery. In any event, unless the company is an investment company,

* This is the first of three articles considering the background to the formation of a private company. They will be followed by a further series dealing with the actual formation of the company.—ED.

it is unlikely that a distribution of more than 50 per cent. of the profits will be required.

In suitable cases the directors of a company may be able to ward off a sur-tax direction by means of a statutory declaration of non-avoidance of sur-tax under s. 251 of the Act of 1952, or be able to obtain a sur-tax clearance under s. 252. If a direction is threatened they may also be able to reach agreement with the Revenue as to a reasonable rate of dividend to be paid. To take avoiding action by "placing" 25 per cent. of the company's shares with the public will usually necessitate assets of at least £200,000 and annual profits averaging not less than £40,000 over the last three years. Even to make the family company a subsidiary of a non-controlled company will scarcely be a popular move with directors who have hitherto enjoyed freedom from outside control. But some comfort is to be derived from the fact that as profits tax on companies normally takes the place of sur-tax on individuals, profits subject to a sur-tax direction are (saving exceptions) exempt from profits tax. Consequently, where the members of a company are in the lower sur-tax group (or not liable to sur-tax) a sur-tax direction may be a blessing in disguise, and effect should, if possible, be given to this consideration in the distribution of share capital when the company is first formed, since subsequent transfers of shares with this object in view may constitute a penalised avoidance device under s. 32 of the Finance Act, 1951.

During the time that controlled companies enjoyed the protection of the Chancellor's "umbrella" it was possible for many family companies to accumulate within the company large sums by way of undistributed profits, and later to withdraw those profits, or some of them, in the guise of capital. The withdrawal of the Chancellor's protection, resulting, as it inevitably will, in lessened scope for such accumulation in future, has diminished somewhat one of the major advantages of the family company from a capital standpoint.

K. B. E.

STATEMENTS SUGGESTIVE OF INNOCENCE

THERE can be no doubt that there are circumstances in which a statement made to a stranger to proceedings is both relevant and admissible in favour of the person making the statement. An obvious example may be found in the special case of complaints of sexual assault made in the absence of the accused as soon after the alleged assault as could reasonably be expected (*R.* v. *Lillyman* [1896] 2 Q.B. 167) and such complaints will be admitted because they tend to show consistency of conduct on the part of the complainant. Perhaps less clearly, further examples may be found in the exceptions to the general rule that hearsay is inadmissible as in the case of *Sugden* v. *Lord St. Leonards* (1876), 1 P.D. 154, where statements made by the celebrated Lord Chancellor to his daughter and other relatives and friends as to the contents of his will were held to be admissible as evidence of such contents when the will could not be found after the death of the testator. In the recent case of *Corke* v. *Corke and Cook* [1958] 2 W.L.R. 110; *ante*, p. 68, the Court of Appeal had to decide whether they would provide a further exception to the general rule that a statement made to a third person after the transaction has been completed is irrelevant and inadmissible in favour of the person making it, or, more particularly, whether a statement made to a third party by a wife who had been accused of committing adultery was admissible in her favour in the subsequent proceedings for divorce.

The husband and an inquiry agent kept watch at night outside a house which was occupied by the wife and two lodgers and when they thought that they had confirmed their suspicions as to the relationship of the wife with the male lodger the husband and the inquiry agent accused the wife of adultery, but this was immediately and forcefully denied by both the wife and the lodger. The point which the Court of Appeal was required to consider arose out of the fact that some ten minutes after the charge of adultery had been made the wife, at the suggestion of the lodger, telephoned her doctor and asked him to come and examine them both with a view to establishing whether or not they had been guilty of misconduct. The fact that the doctor did not comply with her request because he thought that his evidence would be of no value is not really important, but the wife contended, in her defence to her husband's petition for divorce, that the fact that she was prepared to be examined by her doctor was evidence in support of her plea of innocence. Evidence of this telephone conversation was admitted by Mr. Commissioner Blanco White, but the husband appealed and by a majority of two to one the Court of Appeal reversed his decision on this point.

Complaints and admissions distinguished

Hodson, L.J., thought that it was of primary importance to distinguish this case from those where the evidence was against another person or where it amounted to an admission of guilt. This distinction can be more readily appreciated if illustrated. In *R.* v. *Cummings* (1948), 92 SOL. J. 284, the prosecutrix made a statement to a third party and evidence of this statement was admitted when the prisoner was charged with rape, but it must be remembered that evidence of such a complaint will only be admitted in cases of crimes of violence or, more probably, sexual assault. Evidence of statements made to strangers was admitted in *Moriarty* v. *London, Chatham & Dover Railway Co.* (1870), L.R. 5 Q.B. 314, where the plaintiff attempted to suborn false witnesses, because it tended to show that the case advanced by the plaintiff was not a true one. In *Corke* v. *Corke and Cook*, however, the evidence of the telephone call did not fall into either the category of a complaint or an admission of guilt and his lordship was of the opinion that good authority for the rule providing for the rejection of statements or acts which could not be so classified was to be found in *Jones* v. *South Eastern & Chatham Railway Co.* (1918), 87 L.J.K.B. 775.

In that case the appellant alleged that injury to her hand arising from blood poisoning was caused by her pricking her thumb on a nail while working on her employers' premises. The respondents resisted her claim for compensation and contended that the injury had been sustained at the appellant's home and evidence was received of certain persons who were able to say that she had admitted to them that the injury had been inflicted at home. However, evidence was excluded of persons who were able to say that the appellant had told them shortly after the accident was alleged to have occurred that the injury had been received at the place of her employment.

The Court of Appeal upheld the decision of the county court judge who had excluded the evidence in favour of the appellant and Bankes, L.J., thought that it was "quite hopeless" to contend that the cases where statements made by a person in her own favour would be found to be admissible in evidence should be extended beyond the established rule relating to complaints made by a person making a charge of violence. Swinfen Eady, L.J., was of the opinion that the court could not hold otherwise as "if a statement of that kind were admitted it would be easy to manufacture evidence by telling your various friends, and then calling them as witnesses to prove what you had told them."

An opposing view

In *Corke* v. *Corke and Cook* Morris, L.J., did not share the view of Hodson, L.J., and preferred to found his judgment on the general principle that all evidence which is relevant, in the legal sense of the word, is admissible. He cited in support of this opinion words of Lord Simon in *Harris* v. *Director of Public Prosecutions* [1952] A.C. 694, in which he said that "the prosecution may adduce all proper evidence which tends to prove the charge." Morris, L.J., thought that these words should apply equally to the defence and took the view that "if conduct which suggests guilt may be proved, so may conduct which suggests innocence." The fact that the wife had telephoned her doctor to ask him to examine her and the lodger should not be rejected as irrelevant: this evidence should have been admitted and it was the duty of the trial judge to decide what weight should be attached to it.

His lordship also quoted Lord du Parcq in *Noor Mohamed* v. *R.* [1949] A.C. 182, where he said that "the judge ought to consider whether the evidence which it is proposed to adduce is sufficiently substantial, having regard to the purpose to which it was professedly directed, to make it desirable in the interest of justice that it should be admitted." It is conceded that the words of Lord Simon and Lord du Parcq correctly state the law with regard to the relevance and admissibility of evidence, but in so far as that evidence takes the form of a statement made to a stranger which is in favour of the party making it, it must be regarded as being established beyond doubt (subject to the exceptions mentioned above) that such evidence is not "evidence which tends to prove [or disprove] the charge" and therefore that it is not "desirable in the interests of justice that it should be admitted."

The decisive judgment

Indeed, it was the unreliable nature of evidence of a statement made by a person in his own favour which confirmed the view of Sellers, L.J., that the opinion of Hodson, L.J., was to be preferred and that evidence of the telephone call in *Corke* v. *Corke and Cook* was inadmissible. His lordship thought that the statement of Neville, J., in *Jones* v. *South Eastern & Chatham Railway Co., supra,* "that you are not entitled to give evidence of statements on other occasions by the witness in confirmation of her testimony" was a sufficient answer to the point raised by the appellant.

It would be easier to sympathise with the opinion of Morris, L.J., if it was less difficult to accept the fact that the wife and her lodger believed that a medical examination would materially support their plea of innocence. Eyre, C.J., once found that declarations for an accused person were not admissible because "every man, if he was in difficulty, would make a declaration for himself." It is submitted that this proposition, and the finding of the Court of Appeal in *Corke* v. *Corke and Cook,* are not only sound in law but also in sense.

D. G. C.

DISPOSITION OF PROPERTY BY INFANTS

It is generally known that, with the exception of members of the armed forces in actual military service and of mariners when at sea, under English law no valid will may be made by any person under the age of twenty-one years. The attaining of majority by a would-be testator does not validate any will made by him while he was under the disability of infancy. These principles flow from ss. 7 and 11 of the Wills Act, 1837, as amended.

From the foregoing, it might be concluded that no civilian infant when on shore can effectively provide for the disposition of any of his property after his death. Such a conclusion would be erroneous. Certain enactments and regulations specifically enable an infant from the age of sixteen upwards to nominate one or more persons who are to receive certain moneys or securities upon his demise. In theory, it would be possible for an infant to dispose of a considerable total sum under these provisions. Power for infants of and over sixteen to make nominations exists in connection with government stock inscribed in the Post Office Register, national savings certificates, deposits in the Post Office Savings Bank and, up to a limited amount, with deposits in trustee savings banks and with property held in registered industrial and provident societies, friendly societies and trade unions.

Post Office Register

The Post Office Register Regulations, 1925 (S.R. & O., 1925, No. 788, as amended), regulate dealings concerning government stock and securities inscribed or registered in the Post Office Register. The stocks maintained on this register vary from time to time, but at present more than twenty-five issues appear on the list and include such issues as 3 per cent. Savings Bonds 1960/70, 3½ per cent. War Stock, 3½ per cent. Treasury Stock 1979/81 and 4½ per cent. Conversion Stock 1962. There is no limit to the total amount of stock which may be held on the register by an investor, although not more than £1,000 nominal of any particular stock in a calendar year may be transferred for him from the books of the Bank of England to those of the Post Office. The value of such stock at any one time will, of course, vary with fluctuations in the market price. Thus it would be possible for an infant of or over sixteen years to be possessed of substantial investments duly registered.

By the Post Office Register Regulations, any holder of stock, being a person of the age of sixteen years or upwards, may make a nomination directing that, on his death, any one person, or any two or more persons, shall be inscribed as the holder or holders of any stock then held by him and inscribed in his name (reg. 19 (1)). Three alternative provisions may be made by a nomination. First, a nomination may provide that the nominee or nominees are to be inscribed as the holder or holders of the whole of the stock held by him at the date of his death. Secondly, provision may be made that the nominee or nominees are to be inscribed as the holder or holders of any specified portion or fraction of such

stock. Finally, where there is more than one nominee, it can be provided that the several nominees, or any two or more of them, are to be inscribed as the holders of any specified portions or fractions of such stock (reg. 19 (2)).

Every nomination must be made in the form prescribed for the time being by the Postmaster-General. It must be signed by the nominator in the presence of *one* witness who must attest the nominator's signature (regs. 20 (1) and 43 (1)). The witness is not entitled to take any benefit under the nomination (reg. 24 (1) (*d*)). A nomination is of no effect unless it is sent to the Postmaster-General during the lifetime of the nominator (reg. 20 (3)).

Of particular relevance to the question of nominations made by infants (although of general application to all nominations) is the discretion given to the Postmaster-General to refuse to accept any nomination received by him (reg. 21). If the Postmaster-General exercises this right of refusal he is obliged forthwith to send an intimation of his refusal to the nominator (reg. 21).

Revocation of nomination

The death of a nominee in the lifetime of the nominator has the effect of revoking the nomination so far as it relates to the interest of the nominee thereunder. Other causes of revocation of a nomination are the marriage of the nominator, written notice of revocation given in the prescribed manner (containing requirements similar to those governing the making of a nomination), and the making of a subsequent nomination disposing of a nominator's interest in any stock to which the previous nomination relates (reg. 22).

If, on the death of a nominator, any nominee is under the age of sixteen years, the Postmaster-General may not inscribe him as the holder of the stock, or pay to him any dividends accruing due thereon, otherwise than by means of crediting the amount of the dividends to an account in a savings bank, until he attains that age (reg. 24 (1) (*c*)).

If a nominee dies after the nominator's death, but before he has been inscribed as the holder of stock in accordance with the terms of the nomination, the general rule is that the Postmaster-General must inscribe the nominee as such holder in the same manner as if he had not died; a deceased nominee so inscribed is deemed to have been so inscribed immediately before the date of his death (reg. 24 (2)).

Reference at some length has been made to the Post Office Register Regulations. The pattern of those regulations is repeated in the other cases where infants may make nominations and where the Postmaster-General is concerned.

National savings certificates

The potential holding of investments in the context of this article is at a maximum in connection with holdings on the Post Office Register. Alternative methods of holding moneys subject to disposal by infants by way of nomination are not, however, negligible. It would be possible for an infant to be credited with national savings certificates of a purchase value of £2,625 in respect of purchases commenced early in 1947. This is the total amount based on maximum permitted investment per individual ignoring the amount of tax-free accrued interest or the possibility of additional holdings through inheritance. The figure quoted is derived as follows:—

	£	s.	d.
500 units of 7th issue at 15s. each ..	375	0	0
250 „ „ £1 „ „ £1 „ ..	250	0	0
1,000 „ „ 8th „ „ 10s. „ ..	500	0	0
1,400 units of 9th issue at 15s. each ..	1,050	0	0
600 „ „ 10th „ „ 15s. „ ..	450	0	0
	£2,625	0	0

The relevant regulations governing nominations in respect of holdings of national savings certificates are the Savings Certificates Regulations, 1933 (S.R. & O., 1933, No. 1149, as amended).

These regulations closely resemble the Post Office Register Regulations. One difference, however, is that, whereas the Savings Certificates Regulations similarly provide that if, on the death of a nominator, any nominee is under the age of sixteen years the Postmaster-General may not make any payment to that nominee until he attains that age, there then follows a proviso that if it is shown to the Postmaster-General that it is expedient that part or all of the amount repayable in respect of the certificates which are the subject of the nomination should be paid and applied for the maintenance or otherwise for the benefit of that nominee, he may pay the appropriate amount to any person who satisfies him that that person will apply it for such purposes (reg. 17 (1) (*c*)). Any nominee who has attained the age of sixteen years, and to whom a payment is made under the Savings Certificates Regulations, may, by signing a receipt, give a valid receipt without the signature of any other person (reg. 17 (3)).

Nominations of deposits in Post Office Savings Bank

Similar powers of nomination are given to depositors, not under sixteen years of age, in the Post Office Savings Bank. In general, no depositor may have a balance in that savings bank in excess of £3,000 (invested at a rate not exceeding £500 per annum), although there are certain exceptions, e.g., the normal limit may be exceeded by the crediting of an account with interest on the deposit or with dividends on Government stock or bonds held by the depositor on the Post Office Register. Authority for the rules relating to nominations is to be found in the Post Office Savings Bank Act, 1954, s. 7, and the Post Office Savings Bank Regulations, 1938 (S.R. & O., 1938, No. 556).

Nominations of deposits in trustee savings banks

A depositor in the Post Office Savings Bank is permitted simultaneously to hold an account in one trustee savings bank. Under the Trustee Savings Banks Act, 1954, s. 21 (3), and the Trustee Savings Banks Regulations, 1929 (S.R. & O., 1929, No. 1048, as amended by S.I. 1956 No. 1066), a limit of £200 is placed upon the sum which may be nominated by a depositor who, for this purpose, again must not be less than sixteen years of age. Otherwise the rules relating to nominations correspond to those applicable to deposits in the Post Office Savings Bank. The trustees of a trustee savings bank are entitled to exercise their discretion whether or not to accept any nomination. If deposits are transferred from one trustee savings bank to another, or to or from the Post Office Savings Bank, any nomination in force in the savings bank from which the transfer is made does not extend to the deposits transferred.

Nominations of sums payable by trade unions, friendly societies and industrial and provident societies

Members, not under the age of sixteen, of trade unions, registered friendly societies and industrial and provident

societies are entitled to make nominations up to a limit of £200 per member. In respect of trade unions and friendly societies, such nominations are authorised by the Trade Union Act Amendment Act, 1876, s. 10, and the Friendly Societies Act, 1896, s. 56, as amended in both cases by the Friendly Societies Act, 1955. Authority in respect of industrial and provident societies is given by the Industrial and Provident Societies Acts, 1893 to 1954. All these authorising Acts contain certain detailed rules concerning nominations, including prohibition of nomination of an officer or servant of the trade union or society unless the nominee is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator.

N. D. V.

Landlord and Tenant Notebook

NOTICE TO QUIT UNNECESSARY

TEXT-BOOKS on the law of landlord and tenant generally devote some space to the question whether, even in the case of periodic tenancies, notice to quit is always necessary in order to determine them; and special mention is made of tenancy agreements the parties to which are also master and servant. It is said that when that is the case, determination of the contract of service will terminate the tenancy without notice to quit; one text-book makes a statement to that effect somewhat blandly, no authority being referred to. There does not, indeed, appear to be any case directly in point, but support can be found in some decisions relating to the effect of the dissolution of partnership. Before dealing with these, I would mention that, academic though the question may seem, it is possible that it may now be raised in some case in which the effect of the Rent Act, 1957, s. 16, making the minimum length of a notice to quit residential premises four weeks, is relied on.

Partnership tenants

In *Doe d. Waithman* v. *Miles* (1816), 1 Sta. 181, the facts were that a partnership deed recited that a house, which was the property of one of the partners (the lessor of the plaintiff), should be occupied and used by the partnership during the partnership only. Information about the proposed duration of the partnership is lacking; but the defendant, after signing a notice announcing the dissolution of the partnership—also signed by his co-partners—set up that there had been a demise and that no notice to quit had been given. Whether there was what amounted to a tenancy agreement need not have been actually decided; but Lord Ellenborough's: "The house was to be used and occupied by the partnership only, and when that was determined, there was an end of the tenancy," gives us some authority on the question under discussion.

In a later case, *Doe d. Colnaghi* v. *Bluck* (1838), 8 C. & P. 464, there was evidence that a leaseholder had sub-let a shop and other ground floor premises to a partnership formed by himself and the defendant, witnesses testifying as to the rent payable by the firm (£250 a year, the head rent of the building being 250 guineas a year) and stating that the landlord had been a good landlord. Both had signed a notice of dissolution published in the *Gazette*, and in the action for ejectment, Tindal, C.J., ruled that proof of dissolution would show that the tenancy had been determined without notice to quit, leaving to the jury the question whether there had been a letting.

Then in *Benham* v. *Gray* (1847), 5 C.B. 138, the point came under examination in quite a different way, the action being one for trespass to land. In August, 1846, the plaintiff had let the defendant the upper part of a house at £42 a year and they had agreed to carry on the business of appraisers and house agents in the lower part, the firm to pay rent at £20 a year. They do not appear to have hit it off, and on 25th December (whether the day was chosen because of the festival or because of it being a quarter-day) both signed a document stating that the partnership was thereby dissolved. On 2nd January, 1847, the defendant broke into the ground floor premises, both shop and counting-house; the plaintiff brought the action and was awarded 1s. damages. A motion to enter a nonsuit or a verdict for the defendant failed. Referring to the notice signed on 25th December, 1846, Wilde, C.J., said: "By that notice the partnership, as far as any had existed, is put an end to. The premises had before belonged to the plaintiff. In whom did they vest upon the dissolution of the partnership?"

In the above-mentioned cases, the last one especially, the courts reached their conclusions without going too deeply into the question whether any tenancy had actually been brought into being. This does not mean that what was said might not be of use in a case arising out of the Rent Act, 1957, s. 16; but we have a decision of the present century in which the inference of a tenancy was definitely drawn.

General direction

The authority in question is *Pocock* v. *Carter* [1912] 1 Ch. 663. The plaintiff was the widow of a tailor who had carried on business in partnership with the defendant in a house of which he was the leaseholder, and there "was some evidence" that he had refused to give the partnership a tenancy in the premises. On his decease, the plaintiff and the defendant and a third party entered, on 12th November, 1905, into a new partnership, for the term of the life of the plaintiff; the deed provided *inter alia* that the stock-in-trade and the lease of the premises in which the business was carried on were her property, and that all rent, rates, taxes and all outgoings, etc., were to be paid out of yearly profits before division; the defendant was to manage the business. Some two years later the plaintiff instituted a partnership action and an order was made under which stock, book debts and fixtures were sold; but not any interest in the premises. Possession was to be given to the purchaser and payment made on 20th October, 1911. Then, a master's certificate was issued stating that a sum of £95 16s. 2d. was due from the partnership for rent of the partnership premises till 12th November, 1911. The underlying assumption was that a tenancy from year to year, running from 12th November, had been brought into being by the partnership deed.

The defendant sought to vary this certificate by substituting 20th October for 12th November.

It will be observed that even if the certificate could have been upheld, the decision of the master would have had to be

taken as a decision that the bringing of the action on 14th December, 1907, or some later step (the order directing accounts, made on 15th December, 1908 ?) operated as a notice to quit—and an unnecessarily long one. The view taken by Neville, J., however, was that he had not to choose between inferring a tenancy from year to year and inferring a tenancy at will, but that the authorities justified him in holding that " there was intended to be a tenancy during the continuance of the partnership " ; and the certificate was varied accordingly.

The learned judge pointed out that if he held either that there had been a tenancy at will or that there had been a yearly tenancy, the partner owning the premises could have terminated the tenancy during the partnership, which would be a most unsatisfactory position. And while at first sight it looks as if the course taken was not consistent with the essential " certain end " requirement of a tenancy—cf. the " duration of the war " tenancies validated by the Validation of War-time Leases Act, 1944, after *Lace* v. *Chantler* [1944] K.B. 368 (C.A.)—the fact that the partnership had been entered into for the term of the life of the plaintiff would make the case one of conditional limitation.

Rent Act, 1957, s. 16

The section provides that no notice by a landlord or a tenant to quit any premises let as a dwelling shall be valid unless it is given not less than four weeks before the date on which it is to take effect.

The " or a tenant " anticipates such argument as led to *Flather* v. *Hood* (1928), 72 Sol. J. 468, which decided that the minimum twelve months' notice provisions of the then Agricultural Holdings Act, 1923, applied to notices given by tenants as well as to notices by landlords. " A notice to quit " was held, in the case of that enactment, to cover a notice exercising an option to determine (*Edell* v. *Dulieu* [1924] A.C. 38). The essential feature of such a notice is that it is to have the effect, against the will of the other party, of determining the tenancy, as was held in *De Vries* v. *Sparks* (1927), 137 L.T. 441, when the court refused to hold that a tenant who had agreed to give up possession had given notice to quit and thus given the landlord part of a " ground for possession " of controlled premises.

When a weekly wage earner lives in a dwelling let to him by his employer, and is handed or hands in his " cards " on being given or giving a week's notice to terminate the employment, whatever is said with regard to the termination of the employment is hardly likely to amount to a notice to quit the dwelling. But if the two contracts—that of letting and that of service—are sufficiently closely connected, there is, in my submission, no reason why the effect of determining the employment should not be determination of the letting without notice to quit, the principle of *Pocock* v. *Carter*, *supra*, being applicable.

R. B.

HERE AND THERE

MORE VIOLENCE

It is well known that all over the world assault and battery are decisively on the increase. In Western Germany taxi drivers and prison warders are alike pressing for the reintroduction of the death penalty abolished in 1949. In South Africa there is a proposal to extend it to armed robbery. In Bulgaria there is a sudden drive against violent juvenile delinquency and hooliganism generally. In the United States there is a mounting wave of teenage lawlessness. Here in England it is the same story. The new London Sessions House in Newington Causeway, recently opened by the Lord Chancellor with its four courts instead of two, is already out of date for all its " L.C.C. Contemporary " architecture and decoration. The rising tide of crime, represented in the calendars of its jurisdiction, is, at 2,400 cases, something like three times as high as before the war, and a fifth court is needed to cope with it. Meanwhile twenty-two Members of Parliament, in a motion expressing " grave concern at the marked increase in crimes of violence " have suggested, not altogether without a show of reason, that the power should be restored to the courts to inflict corporal punishment in suitable cases.

ORIGIN OF THE SHIRT

Of course, vast tracts of the very best literature from Homer down to our own time have been devoted to the glorification of violence in one form or another, but what shocks the mind in the violence of the contemporary scene is its aimless squalor. Even a little *panache* would make all the difference, though it might fall below the heights of Cyrano's duelling ballade to the level of simple *Cavalleria Rusticana*. Perhaps there is something in the light and air of the Mediterranean, which knew Homer and Virgil and Cervantes and Byron, a spirit which gives tone to what by the North Sea or the Black Sea would be a mere vulgar brawl, and lights it up with a touch of heraldry. Take, at a venture, the case of the shirt that recently came before the courts in Malta. In England the " Song of the Shirt " recalls only a story of social oppression and exploitation ; in Malta it would have something of the ring of a minor epic. Fazzon quarrelled with Scerri and suddenly ripped his shirt, an incident commonplace enough for Stepney or the Angel. The case came before the magistrates' court, as such cases will, and Fazzon with deceptive reasonableness agreed to pay for the ruined garment, suggesting only that, as he was paying for it, he should keep it. But, once in possession of it, he treated it as a prize of war or trophy to be hung up on the outward wall, displayed like enemy colours captured in battle. Shirts, of course, played a decisive part in European history after Mussolini made the black shirt a national emblem. Now Scerri's shirt was flapping in derision from Fazzon's balcony and there he declared it would stay until it fell to pieces. So back to the court went Scerri to complain of defamation by innuendo exposing him to contempt and ridicule. The court, understanding this point of honour, fined Fazzon £1 and ordered him to remove the shirt. Fazzon, maintaining that he could do what he liked with his own apparel, fared worse, incurring a penalty of £3 for bringing a vexatious appeal. But, no doubt, he felt the gesture was worth it, like the French gentleman who, having been prosecuted and fined for slapping the face of a social inferior, immediately laid down double the amount and slapped him again.

A PLEASANT HALL

Large advertisements in the better-class newspapers have lately announced that the Incorporated Accountants' Hall

just west of the Temple below the Essex stairs is up for sale. This graceful little building (little, by the standards of the great commercial office blocks) has been curiously overlooked by writers on London. Admittedly it is twentieth century Tudor, a style very much in disgrace with all those who will admit no merit in anything but rectangular "contemporary" in steel and glass. But it is particularly well done and well worth the careful restoration it got after being blasted by the bomb that proved fatal to the Middle Temple Library. It harmonizes very nicely with its surroundings and is visually a good neighbour to the Temple. It would be pleasant if new ownership could incorporate it functionally into the legal quarter. The Law Society might well be able to find a use for it, as an extension of the present building in Chancery Lane, which is rather unimpressive on ceremonial occasions. Here would be something beautifully sited with a great hall and a fine staircase and a library, all with the pleasantly collegiate atmosphere which the Inns of Court and the City Companies have found so congenial to corporate life.

RICHARD ROE.

"THE SOLICITORS' JOURNAL," 13th FEBRUARY, 1858

ON the 13th February, 1858, the SOLICITORS' JOURNAL reported a case tried by the Military Tribunal at Marseilles before which a storekeeper named Royer and Molard, one of his subordinates, were indicted for embezzlement. It appeared "that in the Crimean War Royer had been charged with the care of tents and clothing at Kamiesch but his accounts presented such irregularities that grave rebukes were addressed to him by the Minister of War . . . At the conclusion of the war . . . it . . . turned out that he had defrauded the State to the amount of 270,000 francs . . . He represented to the tradesmen who supplied goods that the accounts which he was required to keep rendered two copies of their bills and receipts necessary and he persuaded them, in order to save time, as he said, to send him one bill duly receipted and a blank bill-head with a receipt, he promising to make the second copy and fill up the receipt; but, instead of a copy he made an imaginary bill for much larger quantities of goods than had really been supplied. By these means one tradesman of Marseilles . . . who had supplied goods to the amount of 60,000 was made to appear to have sent supplies to the amount of not less than 158,000 francs, and another, who had supplied about 30,000 francs worth, figured for 80,000 francs. In consequence of these frauds, Royer, who at the beginning of the war was only possessed of some 10,000 francs, and whose salary was not large, transmitted to his wife from the Crimea or brought home with him upwards of 200,000 francs . . . Royer, in his defence, pretended that he had made the large sums traced to him by speculations in oxen purchased in Illyria and sold to the army . . . The court condemned Royer to five years' imprisonment . . ."

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the "Points in Practice" Department, "The Solicitors' Journal," 21 Red Lion Street, London, W.C.1, but the following points should be noted:

1. Questions can only be accepted from registered subscribers who are practising solicitors.
2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.
3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Section 13—RESTRICTIONS ON PREMIUMS—APPLICATION—AGREEMENT TO GRANT LEASE

Q. Clients of ours are the leaseholders of a certain property in London in respect of which the lease has approximately nineteen years unexpired. The rateable value is in excess of £40 and the tenant has recently vacated with the result that the Rent Acts will now cease to apply. In re-letting the property our clients would like to charge a premium but under the new Rent Act it is provided that no premium may be required for three years from the passing of the Act unless a lease for a term of more than twenty-one years is granted. As our clients have only nineteen years of their lease they could not do this unless the term of the underlease was made to commence from a date in (say) 1955. We have been unable to find anything in the Rent Act, 1957, to prevent this.

A. In our opinion the vital consideration is whether the expression "grant" should be construed so as to include "agreement to grant"; for the actual prohibition is expressed in these terms: "A person shall not, as a condition of the grant . . . require the payment of any premium" (Landlord and Tenant (Rent Control) Act, 1949, s. 2 (1)) and "As respects grant . . . during the period of three years beginning with the commencement of this Act . . ." (Rent Act, 1957, s. 13 (1)). While we know of no authority directly in point, we consider that the required distinction would be drawn in the circumstances outlined if the clients entered into a contract for a lease to commence on or after 6th July, 1960. The distinction would, in our view, regard being had to the object of the legislation, be more likely to be drawn if the premium were not made payable before that date; but even if it were it could be argued that there was no "grant" during the three years.

Section 13—RESTRICTIONS ON PREMIUMS—APPLICATION—CONVERTED PROPERTIES

Q. I am under the impression that the restrictions against premiums contained in s. 13 of the Rent Act, 1957, do not prevent a landlord recovering as a premium any expenses which he may have incurred since the date of the Act in dividing a house into two or more separate properties, the aim of such exclusion being to encourage the sub-division of old-fashioned properties. On examination of the authorities, however, it would appear from the 1949 Act that only assignors (not landlords) can recover the cost of structural alterations.

A. We agree that the Landlord and Tenant (Rent Control) Act, 1949, s. 2 (1) and (4) (*b*) restrictions on premiums, applied by the Rent Act, 1957, s. 13, do not admit of the requiring of a premium on the grant of an underlease; but the facts suggest that the separate properties would be decontrolled by virtue of the Housing Repairs and Rents Act, 1954, s. 35, being separate and self-contained premises produced by conversion, after 30th August, 1954, of other premises; in which case premiums could, in our opinion, legitimately be required, as the Rent Act, 1957, s. 13, applies to tenancies excluded from the application of the Rent Acts by reason only of s. 11 (1) or (2) of the Act itself or of s. 12 (7) of the 1920 Act.

Rent Limit—Increase of Gross Value—Validity of Notice of Increase of Rent

Q. *X* is the owner of a cottage of which *Y* (an elderly lady of small means) is the tenant. After revaluation, the gross value of the cottage was £10. *Y*, the tenant, appealed and the gross value was reduced to £8. This is believed to have been about June, 1956, and the value of £8 has remained until recently. The present rent is 10s. per calendar month. On 3rd October, 1957, we, on behalf of *X*, served a notice of increase of rent as follows (rates are paid by *Y*, the tenant) :—

	£	s.	d.	
2 × £8	1	6	8	per calendar month
Improvements ..	2	1	8	„ „ „
	£3	8	4	

Between February and June, 1957, *X* carried out extensive improvements to the property costing over £300. The validity of this matter and of the work is not in question. The National Assistance Board make an allowance to *Y*, and have taken up the question of the increase for improvements. On 8th January, 1958, the valuation officer made a proposal increasing the gross value to £10, thereby restoring the original figure. We understand that no objection has been made to the new assessment and that the new assessment has been made because of the improvements. The National Assistance Board contend that the notice which we served is no longer in order because the improvements have affected the 1956 gross value of the dwelling. On the other hand, it may be said that the 1956 value has not been affected because the assessment was not altered until 1958. Schedule VII does not appear to make it clear as to the relevant date. If the National Assistance Board are correct in their view, the rent increase for improvements would not be altered even if the rating assessment were increased because of the improvements five or six years after the work were done.

A. In our opinion your notice of increase is valid. This is a case of an improvement having been completed after 1st April, 1956, and not affecting the 1956 gross value. The proposal to increase the gross value made on 8th January, 1958, can only relate back to 1st April, 1957, and as it is not a proposal within the terms of Pt. II of Sched. V to the 1957 Act it cannot affect the 1956 gross value. Accordingly, by para. 2 (3) of Sched. VII the rent limit ascertained in accordance with s. 1 (1) of the Act (i.e., twice the 1956 gross value of £8) will be increased by 8 per cent. per annum of the amount spent on the improvement.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Notice to Quit Served before 6th July, 1957

Sir,—With reference to the Rent Act Problem "Section 16—Length of Notice to Quit Served before Act Came into Force," on p. 63 of your [25th January] issue, I had a case in the local county court recently in circumstances exactly similar to your questioner's, save only that my notice was given on 28th June (and not 26th June) to expire on 6th July, 1957. I was prepared to argue (*inter alia*) on the authority of *Newman* v. *Slade* [1926] 2 K.B. 328 and *Crate* v. *Miller* [1947] K.B. 946 (C.A.) that the notice to quit terminated the tenancy at midnight on Friday, 5th July, 1957, and that, therefore, the tenancy expired immediately before the Rent Act, 1957, came into force and was outside the provisions of that Act.

Happily, however, our judge held the view that the criterion was the date on which the notice was given and not the date on which it took effect.

J. S. Horsington.

Bristol, 1.

Compensation for Road Injuries

Sir,—I very much hope that I shall not produce tedium if I comment on the views subsequently expressed on this topic. I want first of all to suggest that the rage of Mr. Solloway and Mr. Best is mistaken. All I have done is to question the fairness of making someone pay for an accident for which he is not to blame. As a pure incidental to this, I suggested that motorists had a superior right of way on the roadway built for their use, just as pedestrians had one on the pavement built for theirs. I have since been accused of "sentencing foolish pedestrians to death" and a "lack of consideration for others which causes accidents." Mr. Best, while expressly agreeing with my main point (even to the extent of repeating almost in my own words many of my arguments), still deplores my views with all his heart.

Why ? I do not hate pedestrians : I am frequently one myself. As a motorist I will go to considerable lengths to avoid running over a hedgehog, let alone a human being. In seeking justice for motorists I am not inflicting injustice on pedestrians.

On the main point, that of absolute liability, I have already had my say. On the matter of rights of way, however, perhaps a word of further explanation is called for. I was rather hoping that someone would suggest that pedestrians and motorists had *equal* rights of way, as Mr. Best does, because this gives me the opportunity to point out that this is the one thing they cannot have, either in safety or in logic. Let us, however, assume that Mr. Best and the large number of people who probably think as he does are right, and take an instance. A motorist is driving up a road at the same time as a pedestrian, some distance ahead, starts to cross it. Both remind themselves that they have just as good a right as each other, and proceed happily on their way, meeting in the middle of the road with tragic results. Alternatively, depending on whether they have taken to heart Mr. Best's plea for "courtesy," each will, instead of claiming his right, encourage the other to claim *his*. Each will stop and smilingly wave the other on, and there they will stay, smiling and waving, until they get tired of waiting for one another, continue on their respective ways, and again meet forcefully in the middle of the road.

No. One must have a rule one way or the other (if we have not got one then for goodness sake let us make one), and I submit that the only logical rule must be in favour of the motorist—callous, murdering swine that I am.

As to preventing road accidents, I should have thought that a definite determination of rights and an effort to stick to them would go some of the way. Human nature on both sides of the steering wheel being what it is, however, I think the only real solution is one of physical separation. Roads should be widened and improved, and pavements extended. Cars going in opposite directions should be separated from each other by means of dual carriageways, and pedestrians should, at least in towns, be separated from cars by means of controlled and/or overhead and underground crossings. People should refrain from building houses along main roads. No government, however, is likely to spend money on this sort of thing. To spend it on preparations to blow people to bits is, after all, so much more exciting.

R. T. Oerton.

Bideford.

The dignity of a Barony of the United Kingdom has been conferred upon The Right Honourable Sir William Norman Birkett, Knight, by the name, style and title of Baron Birkett, of Ulverston, in the County Palatine of Lancaster.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

PROFITS TAX: INVESTMENT COMPANY: DIRECTION BY SPECIAL COMMISSIONERS: COMPUTATION OF COMPANY'S ACTUAL INCOME

Income Tax Special Commissioners *v.* Linsleys (Established 1894), Ltd.

Viscount Simonds, Lord Morton of Henryton, Lord Reid, Lord Somervell of Harrow and Lord Denning.

23rd January, 1958

Appeal from the Court of Appeal ([1957] 2 Q.B. 78; 101 Sol. J. 318).

The Special Commissioners of Income Tax appealed from an order of mandamus made by the Divisional Court whereby they were ordered to give a direction under ss. 245 and 262 of the Income Tax Act, 1952, in respect of the period 6th April to 7th May, 1953, in relation to a company which went into voluntary liquidation on the latter date. The effect of such a direction (which the company contended the Special Commissioners were bound to make under the mandatory provisions of s. 262) would be (*a*) to make the actual income of the company from all sources for the relevant period apportionable amongst its members for sur-tax purposes; and (*b*) to give under s. 31 (3) of the Finance Act, 1947, a right of election exercisable jointly by the company and any of its members other than individuals (that is, bodies corporate as distinct from natural persons) which if exercised would operate to relieve the company from a substantial liability in respect of profits tax, while on the other hand rendering apportionable amongst its members for sur-tax purposes the income which, but for the election, would have been absorbed by the profits tax. The Court of Appeal having affirmed the Divisional Court, the Crown appealed to the House of Lords.

Viscount Simonds said that he fully agreed with the reasoning and conclusions of Lord Reid. The appeal should be allowed.

Lord Morton of Henryton said that he, too, agreed with the opinion of Lord Reid. Counsel for the Crown had contended that the Commissioners were not obliged to give a direction under s. 262 (1) of the Act of 1952 followed by an apportionment because: (1) a necessary preliminary to a direction and apportionment was the computation of the company's actual income from all sources under s. 255 (3) of the Act; (2) in computing that income any profits tax payable by the company for the relevant period, "grossed up" in accordance with s. 68 of the Act, must be deducted under the mandatory provisions of the same section; (3) the amount of the profits tax so payable was £16,421 and the gross sum to be deducted was £29,856; (4) when the sum was deducted, the result was that the actual income from all sources of the company for the relevant period was reduced to nil; (5) there was no obligation under s. 262 to make a direction in regard to non-existent income and no possibility of "apportioning" nothing; (6) therefore, s. 262 (1) imposed no duty on the Special Commissioners for the relevant period. Counsel for the Crown also said that profits tax was now "payable" within the meaning of s. 68 of the Act of 1952 because the distributions made by a company in liquidation attracted profits tax under the charge imposed by s. 30 (3) of the Finance Act, 1947, and the amount of tax payable had been particularised by an assessment made on the company. The decision of the appeal turned on the question whether the sum of tax was or was not "payable" within s. 68 in the circumstances of the present case. The contentions for the Crown were well founded. The appeal should be allowed.

Lord Reid said that the difficulty arose from the inter-relation of provisions by which the income of certain companies could be deemed to be the income of their members, beginning with s. 21 of the Finance Act, 1922, and provisions dealing with profits tax, which began as national defence contribution in the Finance Act, 1937. It could only arise if the profits tax payable by an investment company in respect of a particular period exceeded its profits for that period. This had happened because in the past the company had enjoyed non-distribution relief in respect of profits not then distributed to its members, and when those profits came to be distributed in the liquidation, the company had to pay distribution charges corresponding to the earlier non-distribution relief, in addition to profits tax payable in respect of actual profits for the period in question. The drafting of the various statutory provisions suggested that the possibility was overlooked. This was an investment company and the question was whether for the period in question the company had any actual income. If the profits tax was not a proper deduction the company had an actual income and the Commissioners were bound to give a direction and to apportion that income. But if the profits tax were deductible in ascertaining the actual income the company had no income and the Commissioners were not bound to give a direction. The Special Commissioners, who dealt with directions, did not deal with profits tax and in the general case of a trading company a considerable time must elapse before they were in a position to decide whether to give a direction. In the meantime profits tax might well have been assessed and, on a demand for payment thereof, it would be no answer to say that the profits tax was not payable because the Special Commissioners might later give a direction which would be followed by an apportionment and consequent relief from the tax. At least as regarded trading companies, profits tax which had been assessed was "payable" in every ordinary sense of the word and therefore must be allowed as a deduction by the Commissioners in computing the actual income, when considering whether the sums distributed to the members amounted to a reasonable part of the company's income. If the actual income was inflated by neglecting the liability for profits tax because it was not yet "payable," the Commissioners might give a direction which they would not have given had the amount of the actual income been the lower figure resulting from the deduction of the amount of the profits tax. Turning to s. 31 (3) of the Finance Act, 1947, under which the question arose, no question of relief from profits tax could arise until there had been a direction and consequent apportionment of the actual income of the company. There could not be a direction unless the company had an actual income, and, in determining whether it had an actual income, there must be deducted profits tax which was payable and would remain payable if no direction was given. If the company was right it would escape payment of £16,421 by electing to pay sur-tax on a sum not exceeding £8,920. The appeal should be allowed.

The other noble and learned lords agreed. Appeal allowed.

Appearances: *Sir Reginald Manningham-Buller*, Q.C., A.-G., and *E. B. Stamp* (*Solicitor of Inland Revenue*); *King*, Q.C., and *H. Monroe* (*Smith & Hudson*, for *Rollitt, Farrell & Bladon*, Hull).

[Reported by F. Cowper, Esq., Barrister-at-Law] **[2 W.L.R. 292**

Court of Appeal

RAILWAY ACCOMMODATION CROSSING: COLLISION IN FOGGY WEATHER: RAILWAY AUTHORITIES' DUTIES

Kemshead *v.* British Transport Commission

Lord Goddard, C.J., Denning and Birkett, L.JJ.

20th July, 1956

Appeal from Stable, J.

The plaintiff was a passenger travelling in a car on a foggy morning across a railway accommodation crossing, when a train came into collision with the car and the plaintiff was seriously injured. In an action against the British Transport Commission alleging negligence, Stable, J., found in favour of the plaintiff. The defendants appealed.

Lord Goddard, C.J., said that there was no obligation on a railway company to put watchmen or have signals or bells at accommodation crossings nor to whistle unless the circumstances were such that an ordinary prudent man would know by reason of the special nature of the crossing that people might reasonably be expected to be upon it at any time. There was no ground for holding that the accommodation crossing in the present case was any different from the many other farm accommodation

crossings which one found all over the country. But counsel for the plaintiff said that if there was a fog then some special precautions had to be taken. That was right, but the special precautions had to be taken by the persons crossing the line, who should stop, look and listen. Special conditions had to be special to the crossing and there were no special conditions attaching to the crossing in question. There was no duty on the defendants to whistle or take other special precautions.

DENNING, L.J., agreeing, said that it was the responsibility of the people crossing the line on a foggy morning to take special care themselves and there were no special circumstances which put on the defendants the duty to whistle.

BIRKETT, L.J., agreed. Appeal allowed.

APPEARANCES: *Marven Everett*, Q.C., *Graham Swanwick*, Q.C., and *H. Tudor Evans* (*M. H. B. Gilmour*); *Phineas Quass*, Q.C., and *Montague Solomon* (*Iliffe, Sweet & Co.*, for *Burnham, Son & Lewin*, Wellingborough).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[1 W.L.R. 173**

ARBITRATION: STAY OF PLEADINGS: SUBMISSION TO FOREIGN COURT

The *Fehmarn*

Lord Denning, Hodson and Morris, L.JJ.

17th December, 1957

Appeal from Willmer, J. ([1957] 1 W.L.R. 815; 101 SOL. J. 535).

The plaintiffs, an English company and the holders of a bill of lading which acknowledged the shipment at a Russian port, in apparent good order and condition, of a cargo of turpentine by a Russian organisation for carriage to London, began an action against the owners of a German vessel in which the turpentine was carried for damages arising out of a dispute under the bill of lading, it being alleged that, on delivery in London, the turpentine was discovered to be contaminated. It was a term of the bill of lading that all claims and disputes arising thereunder "shall be judged in the U.S.S.R." After discharge the turpentine and the vessel were surveyed in the United Kingdom, and all the plaintiffs' witnesses as to their title to sue were in the United Kingdom. The German vessel traded regularly to the United Kingdom. Counsel for the defendants intimated in argument that the defendants might wish to call evidence at the trial as to the condition of the railway wagons from which the turpentine had been loaded. The defendants moved for an order that the writ of summons be set aside for want of jurisdiction, or, alternatively, that the action be stayed. Willmer, J., held that the court had jurisdiction and, exercising his discretion in favour of the English company, refused to stay the action. On appeal by the defendants, it was no longer contended that the court lacked jurisdiction.

LORD DENNING said that there seemed no doubt that a dispute such as the present properly belonged for its determination to the courts of this country. But the question was whether the courts in their discretion should stay the action. For the defendants it was said that the contract was governed by Russian law and should therefore be judged by the Russian courts. His lordship did not regard the choice of law in the contract as decisive. He preferred to see with what country the dispute was most closely concerned. Here the Russian element in the dispute seemed to be comparatively small. The dispute was between the German owners and the English importers. In the circumstances the dispute was more closely connected with England than Russia and sufficient reason had been shown why the proceeding should continue in these courts and should not be stayed.

HODSON, L.J., agreeing, said that the judge was quite correct in saying that on the authorities, particularly having regard to what was said in *The Athenee* (1922), 11 Ll.L. Rep. 6, he had a discretion in considering whether a stay should be granted, and he was entitled to take into consideration in exercising his discretion matters of convenience. He had not erred in any way in so doing and, if that was so, it was not for this court to substitute its discretion for his.

MORRIS, L.J., gave a concurring judgment. Appeal dismissed. Leave to appeal refused.

APPEARANCES: *T. G. Roche*, Q.C., and *Derek H. Hene* (*Bentleys, Stokes & Lowless*); *G. G. Honeyman*, Q.C., and *H. V. Brandon* (*Clyde & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 159

NUISANCE: GRATING IN PAVEMENT: LIABILITY OF OCCUPIER OF ADJOINING PREMISES TO REPAIR

Macfarlane *v.* Gwalter

Lord Evershed, M.R., Romer and Ormerod, L.JJ.

19th December, 1957

Appeal from Judge Glazebrook sitting at Gravesend County Court.

A grating in the pavement of a public highway was in bad condition and was found to constitute a dangerous trap. The purpose of the grating, which had probably formed part of the highway when it was dedicated, was to admit light to the cellar window of an adjoining building, and the defendant, who was the occupier of that building, knew of the condition of the grating and had failed to repair it. The plaintiff was walking along the pavement when her leg went through the grating and she was injured. She claimed damages for nuisance caused by breach of the defendant's duty under s. 35 (1) of the Public Health Acts Amendment Act, 1890. The county court judge held that the action should be dismissed since the grating was part of the surface of the highway and the local authority was responsible for its repair.

ORMEROD, L.J., reading the first judgment, said that the questions for the court were whether the defendant was under any duty to repair the grating and, if so, whether by reason of his failure to perform this duty a nuisance had been created upon the highway causing injury to the plaintiff for which the defendant could be made liable in damages. On behalf of the defendant, it was agreed that if the grating in question did not form part of the dedicated highway the defendant would be liable. But it was submitted that as the grating was in position at the time the highway was dedicated and was fixed to the highway it was part of the highway and became vested in the local authority by reason of the Public Health Act, 1875, s. 149, which provided that all streets being, or which at any time became, highways repairable by the inhabitants at large should vest in and be under the control of the urban authority. It was argued that the gratings and other matters referred to in s. 35 of the Act of 1890 comprised only cases where the gratings, etc., were not a dedicated part of the highway and therefore not vested in the local authority. His lordship could not accept that submission. Section 35 referred to certain structures which were either under the street or on the surface of the street, and its intention was to throw on to the owners or occupiers of those structures, or on the owners or occupiers of the adjoining buildings, the duty of keeping them in repair whether they had been the subject of dedication or not. A grating such as the one in question belonged to the adjoining house or building in the sense that it came into existence and had continued to exist for the sole purpose of providing access of light to the cellar of that house or building, and therefore the duty to repair it fell on the defendant. Whether that duty arose by statute or from any other circumstance was irrelevant.

LORD EVERSHED, M.R., and ROMER, L.J., agreed. Appeal allowed.

APPEARANCES: *Hugh Griffiths* (*Church, Bruce & Hawkes*, Gravesend); *Raymond Kidwell* (*Tolhursts*, Gravesend).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 268**

DIVORCE: DISCLOSURE OF SUCCESSFUL PARTY'S ADULTERY AFTER DECREE ABSOLUTE: APPEAL AGAINST COSTS ORDER

Kingston *v.* Kingston (Gilder cited)

Hodson and Pearce, L.JJ., and Harman, J. 22nd January, 1958

Motion for leave to adduce fresh evidence and to appeal out of time.

Appeal with leave from Mr. Commissioner Blanco-White, Q.C.

Section 31 (1) of the Supreme Court of Judicature Act, 1925, provides: "No appeal shall lie— . . . (*e*) from an order absolute for the dissolution or nullity of marriage in favour of any party who having had time and opportunity to appeal from the decree *nisi* on which the order was founded, has not appealed from that decree." A husband, whose wife had petitioned for divorce on the ground of his alleged cruelty, cross-petitioned on the ground of the wife's admitted adultery with the party cited. After a six-day hearing, mainly on the issue as to cruelty, the commissioner dismissed the wife's petition, granted the husband

a decree *nisi*, and ordered that the party cited should pay all the husband's costs. Two months after the decree had been made absolute, and both parties had married again, the party cited applied to the commissioner for leave to appeal against the order as to costs, supporting his application by fresh and undisputed evidence that the husband had before the hearing of the petition himself been guilty of adultery which he had concealed from the court. Leave to appeal was granted, and the party cited moved for leave to appeal out of time and to adduce fresh evidence. The party cited also appealed.

HODSON, L.J., said that the husband had not committed perjury. But he had kept back the fact of his own adultery and misled the commissioner into believing that a state of facts existed which did not exist. It would be wholly wrong for the court to lend countenance to such deception by giving the husband any relief, in those circumstances, against the party cited. Now that the court had been enlightened it had to do what it could to put the matter right by altering the order in the way the party cited asked and make no order as to costs, leaving each party to bear his own costs. The contention for the husband that the court could not take any such course because of the provision against appeals from decrees absolute contained in s. 31 (1) (*e*) of the Judicature Act of 1925 could not be accepted. This was not an appeal from a decree absolute but from the order as to costs. His lordship did not accept the argument that the order for costs was in such a way ancillary to the decree *nisi* as to merge with it in the decree absolute. The Matrimonial Causes Rules, 1957, by r. 69. showed that the court was alive to the difference between the order and the decree which actually dissolved the marriage. Though it was not necessary to consider whether the party cited here had had " time and opportunity " to appeal from the decree *nisi*, his lordship was inclined to say that he had had no such " time and opportunity." The fresh evidence should be admitted on the same principles as were applied in all applications of that kind, and the appeal should be allowed.

PEARCE, L.J., and HARMAN, L.J., delivered concurring judgments. Motion to adduce fresh evidence and appeal allowed.

APPEARANCES: *Anthony Lincoln* (for *F. Maurice Drake*) (*Field, Roscoe & Co.*, for *Cave & Co.*, Luton); *Eric Falk* (*Peacock & Goddard*, for *Cooke & Sons*, Luton).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[2 W.L.R. 310**

Chancery Division

TRUST AND TRUSTEE: STATUTORY POWER OF ADVANCEMENT: PAYMENT TO BENEFICIARY DIRECT

_In re_ Moxon's Will Trusts; Downey _v._ Moxon

Danckwerts, J. 28th January, 1958

Adjourned summons.

C S M had a life interest in the residuary estate of his father, and his son, *B M*, was contingently entitled to the capital thereof if he survived *C S M*. In the event of *B M* failing to survive his father the fund went to the children of *B M* in equal shares. *B M* was thirty-three years of age at the present time, and had two infant children. The will contained no power of advancement, and the court was asked whether the trustees of the will could lawfully exercise the power of advancement conferred by s. 32 of the Trustee Act, 1925, by the payment, with the consent in writing of *C S M*, to *B M* for his own use of a sum out of the residuary estate not exceeding one-half thereof. The estate was now worth about £55,000 and the trustees proposed to advance a sum of £20,000 to *B M*. The evidence was that *B M* did not require the money for any particular purpose but that he was a responsible person and could be relied to use the money in the best interest of himself and his family.

DANCKWERTS, J., said that s. 32 of the Trustee Act, 1925, was in quite wide and general terms. It conferred on the trustees power at any time to pay or apply any capital money subject to a trust, " for the advancement or benefit," in such manner as they might, in their absolute discretion, think fit of any person entitled to the capital of the trust proper, whether absolutely or contingently. The evidence was that one thing which had operated in the trustees' minds with regard to the proposed payment was that there would be substantial saving in estate duty on the death of the tenant for life; and that undoubtedly would enure for his benefit. The word " benefit " was the widest possible word one could have and it must include a payment direct to the beneficiary; but that did not absolve the trustees from making up their minds whether this particular payment was for the benefit of the beneficiary. He would say that the power included a payment of capital moneys directly to the beneficiary, but that the trustees had to satisfy themselves that it was a proper case for a payment to be made in that manner.

APPEARANCES: *Kenneth Elphinstone; Michael Kelly; E. J. A. Freeman* (*Crossman, Block & Co.*, for *Eaton Smith & Downey*, Huddersfield).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 165**

Queen's Bench Division

RAILWAY ACCOMMODATION CROSSING: COLLISION IN FOGGY WEATHER: RAILWAY AUTHORITIES' DUTIES

Hazell _v._ British Transport Commission

Pearson, J. 29th November, 1957

Action.

The plaintiff's son, who was driving a tractor across a railway accommodation crossing on a foggy morning, was killed when a train ran into the tractor. In a claim under the Fatal Accidents Acts, 1846–1908, and the Law Reform (Miscellaneous Provisions) Act, 1934, negligence was alleged against the railway authorities and their engine driver. The train ran on a single line round a left-hand bend with a slow down gradient and in ordinary weather could have been seen by the deceased several hundred yards before the crossing. Pearson, J., found that due to the weather, *inter alia*, the train was comparatively silent but could have been heard by a man on the crossing if there was no other noise. The obvious explanation of the accident was that the deceased still had the engine of the tractor running and could not have heard the train. He could have switched off the engine a short time before he had to cross the line and would then have heard the train.

PEARSON, J., said that, where there was an accusation of negligence, it was a question of fact whether in a particular situation the defendants behaved negligently or not. But one could look at other cases to see how that basic rule could properly be applied to the following situation: when a railway engine driver was coming to an accommodation crossing, what could reasonably be expected of the driver and what previous precautions could reasonably be expected of the railway company? From the cases one could deduce that there was a general principle rather to the effect that special precautions could not reasonably be expected of the railway authorities or their drivers where an ordinary accommodation crossing was concerned. By " special precautions " were meant precautions such as erecting whistling boards, reducing speed or whistling on approach to level crossings. The question of fog was fully dealt with in *Kemshead* v. *British Transport Commission* (*ante*, p. 122) and there was no sufficient differentiating feature in the present case.

APPEARANCES: *N. C. Lloyd-Davies* (*Alan, Edmunds & Phillips*); *H. Tudor Evans* (*M. H. B. Gilmour*).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[1 W.L.R. 169**

SHIPPING: SALVAGE: TAX ELEMENT

Island Tug and Barge, Ltd. _v._ S.S. _Makedonia_ (Owners); The _Makedonia_

Pilcher, J. 19th December, 1957

Special case stated by an appeal arbitrator.

A company of professional salvors, incorporated in Canada, rendered salvage services to the steamship *Makedonia* on the terms of Lloyd's Standard Form of Salvage Agreement (No Cure —No Pay). Under the terms of this agreement the arbitrator made an award and the salvors then appealed to the appeal arbitrator. The appeal arbitrator increased the award to £60,000 and found that on the profit made, by reason of this award, the salvors under Canadian law would be liable to pay tax amounting to about £18,000. The appeal arbitrator awarded the salvors £75,000 (this sum comprising the award of £60,000, plus an additional £15,000 by way of contribution towards the tax payable on the award), subject to the question of law whether, in assessing an award for salvage services rendered by the owners of a salvage vessel, the incidence of taxation on any award made should be taken into consideration.

PILCHER, J., said that he found it impossible to distinguish the present case, either on the facts or in principle, from *The Telemachus* [1957] P. 47, and he had to consider the respondents' submissions that Willmer, J., was wrong in law in the decision at which he arrived. It was clear that Willmer, J., decided that, when personal salvage services were in question, the incidence of taxation should be taken into account because of the decision in *British Transport Commission* v. *Gourley* [1956] A.C. 185. The following distinctions between *Gourley's* case and the present sprang at once to the eye. Damages in tort and for breach of contract were not subject to tax, whereas salvage awards, or at least such profit element as they might contain, attracted tax. In *Gourley's* case the sum awarded was reduced by the introduction of tax considerations. In the present case it was sought to increase the award by bringing tax into consideration. The claimants were subject to the fiscal laws of their country of incorporation and there appeared no principle laid down in *Gourley's* case which justified the introduction into the ancient law of salvage of so startling and important an element as was contended for by the claimants and was held by Willmer, J., to be present in *The Telemachus*. His lordship felt compelled to disagree with the views expressed by Willmer, J., and did not feel that any principle laid down in *Gourley's* case compelled him to take the view that a salvor who was already generously rewarded on well-known principles, should have his award further increased so as to indemnify him wholly or in part for the fact that the fiscal law to which he was subject required him to pay tax on the profit element in his salvage award. If it was right that awards made to salvors, which were already assessed on generous lines, should be exempted in whole or in part from liability to tax, that was a matter for consideration by the legislature. It was not the business of the court to defeat or mitigate the effect of the fiscal laws of this or any other country, more especially where this could only be done at the expense of the owners of the salved property. Appeal allowed.

APPEARANCES: *Sir David Cairns*, Q.C., *S. Knox Cunningham* and *Barry Sheen* (*Constant & Constant*); *K. S. Carpmael*, Q.C., and *Michael Kerr* (*Ince, Roscoe, Wilson and Griggs*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law [2 W.L.R. 256

MARINE INSURANCE: "PROLONGATION" OF VOYAGE: DIVERSION AFTER ADMIRALTY ADVICE

Union-Castle Mail Steamship Co., Ltd. *v.* United Kingdom Mutual War Risks Association, Ltd.

Diplock, J. 22nd January, 1958

Action.

The plaintiff shipowners insured two of their vessels, the *Dunnottar Castle* and the *Rhodesia Castle*, cargo and passenger liners, under the 1956–57 Standard Form of War Risks Time Policy on Hull and Machinery issued by the defendants. By cl. 1 of the policies: "1. This insurance is only to cover the following . . . (F) Expenses incurred by the assured by reason of: (1) the detention of the insured ship in pursuance of the orders or directions or with the approval of the committee or of any British Government department or official or British military authority given in order to avoid loss of or damage to the insured ship by any peril hereby insured; (2) prolongation of the voyage arising out of compliance with such orders or directions, or with such approval as aforesaid"; and there was a franchise whereby "Nothing shall be payable in respect of the first seven days of each such period of detention or prolongation . . ." The *Dunnottar Castle* sailed from London on 17th October, 1956, on a scheduled round-Africa voyage in a clockwise direction and was due to return to London on 21st December. The *Rhodesia Castle* sailed from London on 26th September on a scheduled round-Africa voyage in an anti-clockwise direction and was due to arrive back on 1st December. On 30th October, 1956, the Admiralty issued the following statement: "In view of the situation between Israel and Egypt, merchant shipping is advised for the time being and until further notice, to keep clear of the Suez Canal and Egyptian and Israeli waters." The plaintiffs ordered the *Dunnottar Castle*, then at Port Said, to turn round and sail back by the Cape, and the *Rhodesia Castle*, which was at Beira on 30th October and due to proceed to Mombasa and Port Sudan (which was outside the area covered by the Admiralty order), to turn round at Mombasa and go back via the Cape and Mediterranean ports. The plaintiffs notified the defendants of the diversions and the defendants acknowledged the information, but made no comment. The plaintiffs did not seek any approval of their instructions to the masters of the vessels, but had they asked the committee the committee would in fact have approved them. The *Dunnottar Castle* reached London on 10th January, 1957, and the *Rhodesia Castle* on 11th December, 1956. In the event calls were made by both vessels at unscheduled ports, some of the scheduled ports were not called at, and additional passengers were taken on and carried in a reverse direction to the scheduled voyages of the vessels. The plaintiffs claimed that there was a loss under cl. 1 (1) (F) (2) of the policy in respect of each vessel.

DIPLOCK, J., reading his judgment, said that the Admiralty warning of 30th October was no more than advice and had no legal sanction behind it. On the construction of the policy his lordship held that "orders or directions . . . of any Government department" applied only to instructions the ignoring of which gave rise to legal sanctions and did not include advice, warnings or exhortations which a shipowner was at liberty to accept or disregard as he pleased. The Admiralty warning was therefore not an order or direction within the meaning of cl. 1 (1) (F). But it seemed to his lordship that the latter part of the clause covered steps taken in accordance with the Government's views. Whether or not a particular step was taken with the "approval" of the Admiralty was a question of fact. If advice was given by the Admiralty to all ships generally, then steps taken in accordance with it were taken with the approval of the Admiralty within the meaning of the clause. The plaintiffs were therefore entitled to rely on the Admiralty warning as approval of such steps as were taken by them in accordance with that advice. As to approval by the defendants' committee, his lordship held that there had been no approval, express or implied, within the meaning of the policy: the fact that the committee would have approved if asked was irrelevant, for there could not be an implied approval if none were sought. The Admiralty warning merely advised ships to keep clear of a defined area and was given in order to avoid loss or damage to merchant ships. In turning the *Dunnottar Castle* back at Port Said the plaintiffs were acting with the approval of the Admiralty; so, too, in preventing the *Rhodesia Castle* from proceeding into the area, and it mattered not if their motive in so acting was a mixed one. But in turning round at Mombasa instead of Port Sudan, and failing to proceed to Aden the plaintiffs were not complying with the Admiralty warning or acting with Admiralty approval. His lordship thought that the defendants' contention that the Admiralty approval did not operate on anything outside the defined area put the matter too high; if the result of keeping away from the area necessarily caused deviation which prolonged the length of the voyage, expenses incurred as a result of that prolongation could, in his lordship's view, be recovered under the policy, subject to the franchise. But the peril insured against was the expenses of the prolongation of the voyage—that was the voyage on which the vessel was engaged at the moment when the steps were taken to avoid loss or damage. In each of the present cases, his lordship held, the voyage on which the vessel was engaged when the steps were taken to avoid the area was changed, and could not be considered as the continuation of the same voyage as that on which she was engaged when she turned back. Minor variations in the order of calling at scheduled ports would not necessarily change the voyage, but calling at unscheduled ports, carrying new passengers in the reverse direction to the scheduled voyage, and omission to call at some of the scheduled ports—however sensible commercially—seemed to his lordship to amount to a new voyage and not a prolongation of the original voyage. His lordship therefore found that the plaintiffs were not entitled to recover under either of the policies. His lordship had been asked to deal—as it turned out it would be *obiter*—with questions of principle as to the method to be applied in assessing a claim under the policy. "Prolongation" was used in a purely temporal sense. There could be deviation without prolongation and prolongation did not start until the day upon which the voyage normally would have ended. It was the actual expenses incurred during the voyage after the expiry of the first seven days which were recoverable, and his lordship held that neither savings in the days before the prolongation nor benefits which resulted from the prolongation should be taken into consideration in assessing a claim under the policy. Judgment for the defendants.

APPEARANCES: *A. A. Mocatta*, Q.C., and *Michael Kerr* (*Holman, Fenwick & Willan*); *Eustace Roskill*, Q.C., and *Stephen Terrell* (*Richards, Butler & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [2 W.L.R. 274

Probate, Divorce and Admiralty Division

DIVORCE: PRACTICE: SUBMISSION OF NO CASE TO ANSWER

Lance *v.* Lance and Gardiner

Mr. Commissioner Latey, Q.C. 15th January, 1958

Defended petition for divorce.

At the close of the petitioner's case, by which it was alleged that the respondent had committed adultery with the co-respondent, it was submitted by counsel for the co-respondent that there was no case for him to answer, and that he was not obliged, having regard to the wording of s. 5 of the Matrimonial Causes Act, 1950, to be put to his election to call no evidence upon such a submission. The commissioner ruled that he would not put counsel to his election, and after argument on the evidence held that there was no evidence on which the co-respondent could be found guilty of adultery, and accordingly dismissed him from the suit, reserving detailed judgment until the trial had been concluded.

Mr. Commissioner LATEY, Q.C., giving judgment, referred to the observations in *Yuill* v. *Yuill* [1945] P. 15, 18, in which Lord Greene, M.R., assumed that the practice upon a submission of no case which was discussed in *Alexander* v. *Rayson* [1936] 1 K.B. 169 was a proper practice to follow in the Divorce Division, and said that no such practice of election had in fact existed in the Division before that decision. The commissioner referred also to the judgment of Sachs, J., in *Gilbert* v. *Gilbert and Abdon* (*Adams intervening*) [1958] 2 W.L.R. 8 (*ante*, p. 15), saying that he accepted his lordship's correction of the view which he (the commissioner) had expressed in *Beal* v. *Beal* (*Reade cited*) [1953] 1 W.L.R. 1365 that the wording of s. 5 of the Act of 1950 might be obsolete. That section gave to the court a discretion to rule, without putting counsel to his election, that there was no case for a co-respondent to answer, and to dismiss him, as he had done here, from the suit. Co-respondent dismissed from suit.

APPEARANCES: *Harold Brown*, Q.C., and *D. Armstead Fairweather* (*Smiles & Co.*); *Bernard Gillis*, Q.C., and *Kenneth Jones* (*D. Herbert*, Banbury); *Colin Duncan* (*Stoneham & Sons*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R. 316**

DIVORCE: EVIDENCE: ADMISSIONS BY INFANTS

Alderman *v.* Alderman and Dunn

Sachs, J. 23rd January, 1958

Petition for divorce on the ground of adultery.

At the hearing of a petition for divorce the petitioner sought to adduce evidence of admissions of adultery made voluntarily to an inquiry agent by the infant co-respondent in the presence of the respondent, and contained in a statement signed by him. It was submitted by the Official Solicitor, as guardian *ad litem*, that such admissions by an infant were not admissible in evidence, or, if admissible, that they could not be taken into account against the infant.

SACHS, J., stated that the propriety with which the inquiry agent had made his inquiries had been unquestioned, and said that the case against the wife had been clearly proved. His lordship referred to the submission by the Official Solicitor and to statements and orders put forward by him in support of it, namely, to a passage at p. 2012 of the Annual Practice, 1958 (which stated generally that: "An infant cannot make admissions, but can now be interrogated, or ordered to make an affidavit of documents"), to R.S.C., Ord. 19, r. 13, to the fact that R.S.C., Ord. 31, r. 29, as to discovery, was only introduced in 1893, to Daniell's Chancery Practice, 8th ed., vol. 1, p. 114, and to Phipson on Evidence, 9th ed., at p. 240, where it was stated: "An infant, however, cannot bind himself by any admissions made in an action." His lordship said that it had been submitted on behalf of the co-respondent that the word "admissions," when used in such passages, included two categories of admissions: first, those made formally in the course of proceedings; and, secondly, those made before the proceedings commenced. The first category did not arise in the present cause, for no admissions had been made by the infant in the course of these proceedings. As regards the second category of admissions, those made before proceedings were commenced, counsel had been unable, despite extensive searches, to quote any authority relating either to the suggested inadmissibility of such evidence or to the court's duty to attribute no weight at all to it. It had been conceded in the course of argument that if there was a rule of that nature then on principle it would equally apply to matters of contract and tort. But that point did not appear to have been raised in any of the text-books, and he (his lordship) had had personal experience of many cases in which such admissions by an infant had been accepted by the court in the normal course of events. Nor was there any rule to exclude such admissions even in criminal cases. He (his lordship) could see no reason why admissions such as the one in this case should not be admitted, and he would accordingly find adultery with the wife, and hold that the infant co-respondent could be, and should be, condemned in costs in the normal way. Decree *nisi*. Costs against co-respondent.

APPEARANCES: *John Mortimer* (*Tillson, Phillips & Co.*); *Stuart Horner* (*The Official Solicitor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 177**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Import Duties Bill [H.C.] [6th February.

Overseas Resources Development Bill [H.C.] [6th February.

Read Second Time:—

Clergy Orphan Corporation Bill [H.L.] [4th February.

Falmouth Harbour Bill [H.L.] [5th February.

Isle of Man Bill [H.C.] [6th February.

Kent County Council Bill [H.L.] [5th February.

London County Council (General Powers) Bill [H.L.] [5th February.

Rochdale Corporation Bill [H.L.] [4th February.

Seaham Harbour Dock Bill [H.L.] [4th February.

South Lancashire Transport Bill [H.L.] [6th February.

Surrey County Council Bill [H.L.] [6th February.

Tyne Improvement Bill [H.L.] [6th February.

Waltham Holy Cross Urban District Council Bill [H.L.] [6th February.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

House of Commons (Redistribution of Seats) Bill [H.C.] [5th February.

To amend the House of Commons (Redistribution of Seats) Act, 1949.

Read Second Time:—

Consolidated Fund Bill [H.C.] [6th February.

To apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March, one thousand nine hundred and fifty-eight.

Marriage Acts Amendment Bill [H.C.] [7th February.

Matrimonial Proceedings (Children) Bill [H.C.] [7th February.

Merchant Shipping (Liability of Shipowners and Others) Bill [H.C.] [7th February.

Read Third Time:—

British Nationality Bill [H.L.] [5th February.

Entertainments Duty Bill [H.L.] [5th February.

Forth Road Bridge Order Confirmation Bill [H.C.] [7th February.

B. QUESTIONS

BRITISH NATIONALITY BILL

Mr. R. A. BUTLER gave the following list of the categories of persons whose rights would be affected by the British Nationality Bill and the manner in which such rights would be affected:—

As a result of cl. 1 (1) (*b*) of the Bill—

(*a*) a person who is a citizen of the United Kingdom and Colonies by descent only will no longer transmit his citizenship to his children born in the Protectorates of Northern Rhodesia and Nyasaland, unless he is in the service of the Crown under the United Kingdom Government;

(*b*) a British subject will not be entitled to registration as a citizen of the United Kingdom and Colonies by virtue of residence in those Protectorates;

(*c*) an alien in the United Kingdom will not be entitled to count residence in those Protectorates after the clause comes into operation as qualifying him to apply for naturalisation, save by the exercise of a special discretion by the Secretary of State;

(*d*) British protected persons belonging to Northern Rhodesia and Nyasaland, although retaining their status as British protected persons, will not be able to apply to the Governors of those territories for naturalisation by virtue of residence there, though under the citizenship law of the Federation of Rhodesia and Nyasaland they will be able to acquire British nationality by the simple process of registration as Federal citizens.

By cl. 2 certain persons who are also citizens of Ghana will lose their citizenship of the United Kingdom and Colonies. There is virtually no difference in United Kingdom law between citizens of the United Kingdom and Colonies and other British subjects, and since all the persons who are to lose citizenship of the United Kingdom and Colonies under cl. 2 will continue to be British subjects, their rights in United Kingdom law will remain almost entirely unaffected. The only changes will be that—

(*a*) the transmission of British nationality to their children born abroad will depend on the law of Ghana;

(*b*) if they adopt an alien child in the United Kingdom the adoption will not confer United Kingdom citizenship on it; and

(*c*) they will have to look to the Ghana authorities for the issue of a passport and for the protection which the issue of such a passport implies.

As a result of subs. (5) of cl. 2, a woman will not be entitled to registration as a citizen of the United Kingdom and Colonies by reason of her having been married to such a citizen if her husband has ceased to be such a citizen under cl. 2.

[4th February.

LICENSED CLUBS (RULES)

Mr. DAVID RENTON said that s. 143 of the Licensing Act, 1953, re-enacting s. 92 of the Act of 1910, did not require three copies of a club's rules to be attached to the annual return submitted to the justices, though this was recommended on the annual return forms printed by certain firms. The licensing justices asked for the forms in duplicate to help their clerk.

[6th February.

MATRIMONIAL PROCEEDINGS (MAGISTRATES' COURTS)

Mr. R. A. BUTLER said that doubts had been raised as to the proper interpretation of certain of the statutory provisions as to which a consolidation Bill—the Matrimonial Proceedings (Magistrates' Courts) Bill—had been under consideration, and it was not now practicable to proceed with the Bill. He was therefore setting up a committee to advise him on the steps to be taken to replace with one enactment the existing provisions and he would take the opportunity of incorporating certain of the recommendations made by the Royal Commission on Marriage and Divorce.

[6th February.

STATUTORY INSTRUMENTS

Clean Air Act, 1956 (Appointed Day) Order, 1958. (S.I. 1958 No. 167 (C.2).) 4d.

Copyright (International Conventions) (Argentina) Order, 1958. (S.I. 1958 No. 135.) 5d.

Electricity (Publication of Applications) (Scotland) Regulations, 1958. (S.I. 1958 No. 131 (S.5).) 5d.

Explosives (Fees for Importation) Order, 1958. (S.I. 1958 No. 136.) 4d.

Glamorgan River Board Transfer Order, 1958. (S.I. 1958 No. 159.) 5d.

Guildford, Godalming and District Water Board Order, 1958. (S.I. 1958 No. 163.) 4d.

Import Duties (Drawback) (No. 3) Order, 1958. (S.I. 1958 No. 132.) 5d.

Management of Patients' Estates (Percentage and Fees) Rules, 1958. (S.I. 1958 No. 154 (L.1).) 5d.

These rules, which came into operation on 10th February, 1958, increase the fees and percentages which are payable in respect of the administration of patients' estates by the Court of Protection.

Mayor's and City of London Court Funds (Amendment) Rules, 1958. (S.I. 1958 No. 155 (L.2).) 5d.

These rules came into operation on 10th February, 1958, and increase the rate of interest on money in investment account in the Mayor's and City of London Court from 3 to 3½ per cent. They also simplify payment into and out of court in some respects.

Merchant Shipping (Foreign Deserters) (Federal Republic of Germany) Order, 1958. (S.I. 1958 No. 142.) 5d.

Merchant Shipping (Foreign Deserters) (Italian Republic) Order, 1958. (S.I. 1958 No. 143.) 5d.

Motor Vehicles (Driving Licences) (Amendment) Regulations, 1958. (S.I. 1958 No. 151.) 5d.

Muscat (Amendment) Order, 1958. (S.I. 1958 No. 144.) 5d.

Pocklington Water Order, 1958. (S.I. 1958 No. 162.) 4d.

Reciprocal Enforcement of Judgments (Pakistan) Order, 1958. (S.I. 1958 No. 141.) 4d.

Road Traffic Act, 1956 (Commencement) (No. 7) Order, 1958. (S.I. 1958 No. 149 (C.1).) 4d.

This order appoints 1st March, 1958, for the coming into force of s. 18 (2) of the Road Traffic Act, 1956, which relates to the charge for and period of validity of provisional driving licences.

Road Vehicles Lighting (Projecting Loads) Order, 1958. (S.I. 1958 No. 152.) 4d.

Road Vehicles Lighting (Projecting Loads) Regulations, 1958. (S.I. 1958 No. 153.) 5d.

Stopping up of Highways (City and County Borough of Bradford) (No. 2) Order, 1958. (S.I. 1958 No. 129.) 5d.

Stopping up of Highways (City and County Borough of Bradford) (No. 3) Order, 1958. (S.I. 1958 No. 119.) 5d.

Stopping up of Highways (County of Lancaster) (No. 4) Order, 1958. (S.I. 1958 No. 130.) 5d.

Stopping up of Highways (County of Leicester) (No. 4) Order, 1958. (S.I. 1958 No. 150.) 5d.

Stopping up of Highways (London) (No. 4) Order, 1958. (S.I. 1958 No. 133.) 5d.

Supreme Court Fees (Amendment) Order, 1958. (S.I. 1958 No. 160 (L.3).) 5d.

This order comes into operation on 1st March, 1958. As from that date the fee on sealing a writ of summons is increased to £3 in claims solely for a liquidated sum not exceeding £100, and in any other case to £4. The fee on sealing an originating summons becomes £2 in all cases, whether an appearance is required or not (except where the summons is for leave to present a divorce petition within three years of marriage). The fee on filing a petition in a matrimonial cause or for a legitimacy declaration is increased from £1 to £3. The order also abolishes the fees on entering judgment in default of appearance or defence or under Ord. 14, and likewise abolishes the fee on filing a notice of application to make a matrimonial decree absolute. The order does not apply to proceedings begun before 1st March, 1958.

Supreme Court (Non-Contentious Probate) Fees Order, 1958. (S.I. 1958 No. 161 (L.4).) 7d.

This order coming into operation on 1st March, 1958, completely revokes and replaces the similarly named order of 1950. It substitutes a new and simplified scale of fees and the different fees are reduced in number from some sixty-two to thirty-one. Some fees are reduced and others increased, but the *ad valorem* fee on application for a grant (fee No. 1) is in general increased. In determining the value of personal estate for purposes of the order, there may be excluded (in addition to post-war credits) a death gratuity payable under the Superannuation Act, 1909, s. 2, the Superannuation Act, 1949, s. 39, or the Administration of Justice (Pensions) Act, 1950, s. 2 (2).

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. Prices stated are inclusive of postage.]

NOTES AND NEWS

Honours and Appointments

Mr. DOUGLAS C. S. LANE, assistant solicitor to Radnorshire County Council, has been appointed clerk to the council in succession to Mr. Philip Parker, who will be retiring in August.

Mr. A. G. LOWE, Puisne Judge, Tanganyika, has been appointed Chief Justice, Fiji, in succession to Sir Ragnar Hyne, who is retiring.

Personal Note

It is announced that because of eye trouble Mr. J. L. Girling, the Comptroller-General of the Patent Office, is retiring on 28th February.

Miscellaneous

DEVELOPMENT PLANS

COUNTY OF CORNWALL DEVELOPMENT PLAN

St. Ives Town Map

Proposals for alterations or additions to the above-mentioned development plan were, on 3rd December, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Borough of St. Ives, in the County of Cornwall. A certified copy of the proposals as submitted has been deposited for public inspection at: The Office of the County Planning Officer, County Hall, Truro; The Town Clerk's Office, The Guildhall, St. Ives; The Western Area Planning Office, Alphington, Alverton, Penzance. The copies of the proposals so deposited together with copies of the County of Cornwall development plan are available for inspection free of charge by all persons interested, at the places mentioned above between the hours of 9.30 a.m. and 12.30 p.m., and 2 p.m. and 4.45 p.m. on Mondays to Fridays (inclusive) and 9.30 a.m. until noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 12th March, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Cornwall County Council, County Hall, Truro, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals. The Minister has intimated that objections or representations which may have been made in respect of the advertisement which appeared on the 6th December, 1957, need not be repeated.

KENT DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved, with modifications, the development plan for the County of Kent (Pt. A). This covers the county except for the north-eastern area.

WARDS OF COURT

The Lord Chancellor, after consulting the Lord Advocate and the Lord Chief Justice of Northern Ireland, has appointed a committee to consider and report what alterations in the law and practice are desirable to avoid conflicts of jurisdiction between courts in the different parts of the United Kingdom in proceedings relating to the custody of children and to wards of court and to ensure the more effective enforcement of orders made in such proceedings outside the part of the United Kingdom in which they were made.

Lord Justice Hodson is the chairman of the committee and its other members are Mr. Justice Danckwerts, Lord Cameron, Mr. Michael Albery, Q.C., Mr. I. M. Robertson, Q.C., Mr. Conolly Gage, Mr. W. O. Carter and Mr. J. P. Watson, W.S. The secretary of the committee is Mr. D. H. Colgate, to whom communications may be addressed at the Principal Probate Registry, Somerset House, London, W.C.2.

RATES PAID BY CHEQUE

In view of the changing public attitude toward receipts for payments made by cheque since the passing of the Cheques Act, 1957, and the consequent decrease in value to rating authorities of the receipt system for accountancy purposes, local rating authorities are being empowered, if they wish, to dispense with receipts for rates paid by cheque. In a circular to the authorities the Ministry of Housing and Local Government points out that the Cheques Act has not removed or modified Rate Accounts Orders and Regulations requiring the issue of receipts. Since the Act, however, many bodies, both official and private, have ceased to give receipts and many ratepayers, therefore, will no longer expect them as a matter of course. The circular, authorising local authorities to depart from the Rate Accounts Orders and Regulations in this respect, enables —but does not oblige—them to change their present practice. It also reminds authorities that neither the Cheques Act nor the circular relieves them of liability under the Stamp Act, 1891, to give on demand a stamped receipt for sums of £2 or over.

University College, London, announces that the lecture entitled "Legal Aspects of the European Common Market and Free Trade Areas" which was to have been held on 20th February, has been cancelled owing to the illness of the lecturer.

A lecture entitled "Storm over the Supreme Court of the United States" will be given by Professor Paul A. Freund, A.B., LL.D., S.V.D., at the London School of Economics and Political Science, Houghton Street, Aldwych, London, W.C.2, on 5th March, at 5 p.m. The chair will be taken by the Rt. Hon. Lord Evershed, P.C., F.S.A., Master of the Rolls. Admission will be free, without ticket.

As from 17th February the address of the rent tribunals for Guildford and for Kingston upon Thames will be 36 Sydenham Road, Croydon, Surrey. (Telephone: Croydon 0584).

The Clerk to these tribunals will attend at the tribunals' old address, 19 Upper Brighton Road, Surbiton, every Tuesday and Thursday from 10 a.m. to 1 p.m. to interview callers.

OBITUARY

MR. W. R. BLOXAM

Mr. William Richard Bloxam, solicitor, of Stroud, Glos., died recently, aged 89. He was for many years clerk to the Commissioners of Taxes for the Bisley Division and a director of the Stroud Water Navigation Company. He was admitted in 1894.

MAJOR E. HAYWARD

Major Evan Hayward, retired solicitor, of Bristol, died on 30th January at Colchester, aged 81. He was admitted in 1900.

MAJOR W. F. POTHECARY

Major Walter Frank Pothecary, retired solicitor, of Great Tower Street, London, E.C.3, and Wallington, Surrey, died on 27th January, aged 74. He was a solicitor to the Clothmakers' Company in the City of London and was for many years Justice of the Peace for Wallington. He was admitted in 1905.

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